

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TERRELL O'NEAL,

Plaintiff,

No. CIV S-04-0260 LKK JFM P

vs.

WHITE, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed May 8, 2007, plaintiff's third amended complaint was dismissed and plaintiff was given thirty days to file a fourth amended complaint. After receiving an extension of time, plaintiff has now filed a fourth amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d

1 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is
 2 based on an indisputably meritless legal theory or where the factual contentions are clearly
 3 baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim,
 4 however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885
 5 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

6 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
 7 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
 8 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
 9 Corp. v. Twombly, __ U.S. __, 127 S.Ct. 1555, 1564 (2007) (quoting Conley v. Gibson, 355 U.S.
 10 41, 47 (1957)). In order to survive dismissal for failure to state a claim a complaint must contain
 11 more than “a formulaic recitation of the elements of a cause of action;” it must contain factual
 12 allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, at
 13 1965. However, “[s]pecific facts are not necessary; the statement [of facts] need only “‘give the
 14 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’”” Erickson
 15 v. Pardus, __ U.S. __, 127 S.Ct. 2197 (2007) (quoting Bell, slip op. at 7-8, in turn quoting Conley
 16 v. Gibson, 355 U.S. 41, 47 (1957)). In reviewing a complaint under this standard, the court must
 17 accept as true the allegations of the complaint in question, Erickson, *id.*, and construe the
 18 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
 19 (1974).

20 Plaintiff names eight defendants in the fourth amended complaint, including
 21 defendants identified as J. Pearson, and Shankland. There are no charging allegations in the
 22 fourth amended complaint against these individuals. For that reason, the court will not order
 23 service of process on said defendants.

24 Plaintiff also names C. L. Twyman and Powers as a defendant, and alleges that
 25 said defendants violated plaintiff’s rights because “he’s the supervisors [sic] of everyone that
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1 violated my rights concerning me being sexually abused as well as Powers.” (Fourth Amended
2 Complaint, filed August 20, 2007, at 5.)

3 The Civil Rights Act under which this action was filed provides as follows:
4 Every person who, under color of [state law] . . . subjects, or causes
5 to be subjected, any citizen of the United States . . . to the
6 deprivation of any rights, privileges, or immunities secured by the
7 Constitution . . . shall be liable to the party injured in an action at
8 law, suit in equity, or other proper proceeding for redress.

9 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
10 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
11 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
12 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
13 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
14 omits to perform an act which he is legally required to do that causes the deprivation of which
15 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

16 Moreover, supervisory personnel are generally not liable under § 1983 for the
17 actions of their employees under a theory of respondeat superior and, therefore, when a named
18 defendant holds a supervisory position, the causal link between him and the claimed
19 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
20 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S.
21 941 (1979). Vague and conclusory allegations concerning the involvement of official personnel
22 in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
23 Cir. 1982). Plaintiff's inclusion of defendants Twyman and Powers appears grounded in nothing
24 more than a theory of respondeat superior. Accordingly, the court will not order service of
25 process on these two defendants.

26 The fourth amended complaint states a cognizable claim for relief against the
27 remaining named defendants pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the

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1 allegations of the amended complaint are proven, plaintiff has a reasonable opportunity to prevail
2 on the merits of his claims against these four defendants.

3 In accordance with the above, IT IS HEREBY ORDERED that:

4 1. Service is appropriate for the following defendants: White; Yarber; M. Cry;
5 and Teresa A. Schwartz.

6 2. The Clerk of the Court shall send plaintiff four USM-285 forms, one
7 summons, an instruction sheet and a copy of the fourth amended complaint filed August 20,
8 2007.

9 3. Within thirty days from the date of this order, plaintiff shall complete the
10 attached Notice of Submission of Documents and submit the following documents to the court:

11 a. The completed Notice of Submission of Documents;

12 b. One completed summons;

13 c. One completed USM-285 form for each defendant listed in number 1
14 above; and

15 d. Five copies of the endorsed fourth amended complaint filed August 20,
16 2007.

17 4. Plaintiff need not attempt service on defendants and need not request waiver of
18 service. Upon receipt of the above-described documents, the court will direct the United States
19 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4
20 without payment of costs.

21 DATED: September 13, 2007.

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23 
24 UNITED STATES MAGISTRATE JUDGE

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NOTICE OF SUBMISSION
OF DOCUMENTS

_____/

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ completed summons form

_____ completed USM-285 forms

_____ copies of the _____
Fourth Amended Complaint

DATED:

Plaintiff